83-2108

No. ..-..

IN THE

Supreme Court of the United States

October Term, 1983

ROBERT IVOR LEE CRISTALL,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

BARBARA MAVIS CRISTALL,

Real Party in Interest.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

ADAMS, DUQUE & HAZELTINE
CATHERINE HUNT RUDDY
RONALD F. FRANK
523 West Sixth Street,
Los Angeles, Calif. 90014,

Attorneys for Petitioner,
Robert Ivor Lee Cristall.

Question Presented.

May a California court constitutionally assert *in personam* jurisdiction over a nonresident Canadian individual defendant where plaintiff's domestic relations causes of action arose out of a Canadian marriage and a Canadian separation agreement, where the Canadian individual's sole contacts with California involve non-business visits to the State and passive ownership of realty through nonresident corporations, and where plaintiff's cause of action did not arise out of these contacts?

Parties to the Proceedings Below.

All parties to the proceedings below are included in the caption of this petition. Since the proceeding draws into question the constitutionality of a statute of the State of California, namely California Code of Civil Procedure Section 410.10, and neither the State of California nor any agency, officer, or employee of the State is a party, it is noted that 28 U.S.C. Section 2403(b) may be applicable.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF CASES, CONSTITUTIONAL PROVISIONS, STATUTES AND OTHER AUTHORITY

Cases — Page

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PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

Petitioner Robert Ivor Lee Cristall respectfully prays that a Writ of Certiorari issue to review the judgment of the Superior Court of the State of California for the County of Los Angeles entered in these proceedings on February 22, 1984.

OPINIONS BELOW.

The opinion of the respondent Superior Court of the State of California for the County of Los Angeles denying motion to quash service of process is unreported and is reproduced as Appendix A to this Petition. The order of the California Court of Appeal, Second Appellate District, Division One denying peremptory writ of mandate is unreported and is reproduced as Appendix C to this petition. The order of the Supreme Court of the State of California denying a hearing is unreported.

JURISDICTION.

The judgment of the Supreme Court of the State of California was filed on May 2, 1984. This Petition was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED.

Constitution of the United States, Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Constitution of the United States, Fourteenth Amendment, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATE STATUTORY PROVISION INVOLVED.

California Code of Civil Procedure Section 410.10:

"A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

STATEMENT OF THE CASE.

A. Introduction.

The respondent Superior Court of the State of California for the County of Los Angeles ("respondent court") has required petitioner Robert Ivor Lee Cristall ("Robert") to appear and defend causes of action arising out of his marriage with real party in interest Barbara Mavis Cristall ("Barbara"), despite the absence of Robert's business or domestic relations contacts with the State of California. Throughout their marriage, both Barbara and Robert were citizens, residents, and domiciliaries of Canada. Barbara and Robert were married in Canada. Both children of the marriage were born in Canada and lived there until after Barbara and Robert separated. In June 1981, Barbara and Robert entered into a separation agreement which was negotiated, written and executed in Canada, and which provided that the law of Alberta, Canada would apply to the agreement. In this separation agreement, Barbara waived spousal support since she received a property settlement of $2,700,000. The separation agreement also provided for child support, the amount of which was subsequently increased.

After the separation, Barbara and the two minor children moved to California. Barbara is still a citizen of Canada, and is actually an illegal alien in the United

States. Robert remained a citizen, resident, and domiciliary of Canada. In contravention of the Canadian separation agreement, Barbara brought an action in the respondent court entitled *Barbara Mavis Cristall vs. Robert Ivor Lee Cristall,* WED 43657. In this action, Barbara sought to establish a divorce from Robert, to modify the Canadian separation agreement as to child custody, spousal support, and child support, and to obtain attorneys' fees and costs. Robert was served with a summons on a Petition for Dissolution of Marriage and an Order to Show Cause regarding child support, spousal support, attorneys' fees, and costs at a time when he arrived at Barbara's residence in the State of California in order to exercise the visitation rights granted to him in the Canadian separation agreement. Robert appeared specially in this action and moved to quash service of the Summons on the basis that he had insufficient contacts with the State of California for the respondent court constitutionally to exercise *in personam* jurisdiction over him in this domestic relations matter.

B. The Alleged Contacts With California.

Barbara has argued three grounds for jurisdiction: 1) that Robert periodically visits his children, parents and a doctor in California, thereby establishing his "presence" in California; 2) that Robert is doing or has done business in California; and 3) that Robert's acts elsewhere have caused an effect in California.

The evidence with respect to these arguments was largely undisputed. Robert visited California as many as five times in 1983, to see his children or his parents, who now live in California. He had eye surgery in California in 1971 and returns to California for check-ups. He may have visited the State as many as 25 times over the course of the last 16 years.

Robert is president and the sole shareholder of Lee Equities, Ltd., a Canadian company involved in real estate investment. Lee Equities owns 100% of Balboa Enterprises, Inc., an Arizona corporation. Neither Robert nor either company has offices in California. However, Balboa owns a one-half interest in a parcel of property located in Orange County, California and has invested in a parcel located in Monterey, California. The properties are among some 38 parcels of real property listed by Barbara as assets of the marriage. Virtually all of the remaining parcels of land listed by Barbara are located in Canada. The listing of these two California parcels as being part of Robert's holdings is misleading, in that the value of those parcels should be reflected in the value of the shares of the corporations owning the property. Those shares are personal property situated in Canada.

C. Prior Raising of Federal Issue.

Robert specially appeared to quash service of process in the respondent court on the ground that there is no Constitutional basis upon which California courts may exercise *in personam* jurisdiction over him in this matter. The respondent court denied Robert's motion to quash on February 22, 1984, and on May 24, 1984, ordered Robert to pay $4,000 per month spousal support, $3,000 per month child support, and $10,000 in attorneys' fees and costs. A copy of the respondent court's Minute Order of February 22, 1984 denying the motion to quash is at-

tached as Appendix A to this Petition. The California Court of Appeal, Second Appellate District, Division One, summarily denied Robert's Petition for Peremptory Writ of Mandate and Request for Stay on April 5, 1984, despite Robert's constitutional objections to the exercise of jurisdiction. A copy of the Court of Appeal's order is attached as Appendix C to this Petition. The California Supreme Court summarily denied Robert's Petition for Hearing on May 2, 1984, again despite Robert's constitutional arguments.

ARGUMENT.

A. THE JURISDICTION OF THIS COURT IS PROPERLY INVOKED.

The restrictions of the Fourteenth Amendment apply to all branches of state government, including the judiciary. The prohibitions of the Fourteenth Amendment "have reference to actions of the political body denominated by a State, by whatever instruments or in whatever modes that action may be taken." *Ex Parte Virginia*, 100 U.S. 339, 346-47, 25 L.Ed. 676 (1879). A final judgment of a state court, under authority of which property is to be taken, is "deemed the act of the state within the meaning of the Fourteenth Amendment." *Chicago, Burlington & Quincy Railroad Company v. Chicago*, 166 U.S. 226, 235, 41 L.Ed. 979, 17 S.Ct. 581 (1896).

The decision of the respondent court is subject to constitutional scrutiny under 28 U.S.C. Section 1257(3). Petitioner Robert has exhausted the avenues of review available in the State of California: the California Court of Appeal and the California Supreme Court. Accordingly, Robert obtained a final judgment rendered by the highest court of the State of California in which decision could be had, within the meaning of Section 1257. Here, as in *Shaffer v. Heitner*, 433 U.S. 186, 53 L.Ed.2d 683, 97 S.Ct. 2569 (1977), this Court should accord finality to a state court ruling denying a motion to quash service over constitutional objections. Like the defendant in *Shaffer*, petitioner Robert here would be faced with the unpalatable choice of suffering a default judgment, or of entering a general appearance and thereby waving his jurisdictional arguments if the judgment below on the constitutional issue were not considered final. *See Shaffer*, 433 U.S. at 195 n. 12.

This case presents a substantial federal question directly bearing on the merits of the action and which was

raised at all levels from the trial court through the state appellate system. The California statute at issue, Code of Civil Procedure Section 410.10, extends the reach of the California "long arm" statute to the full extent permitted by the Due Process Clause of the United States Constitution. *Sibley v. Superior Court of Los Angeles County*, 16 Cal.3d 442, 445, 128 Cal.Rptr. 34, 546 P.2d 322, *cert. denied sub nom. Carlsberg Mobile Home Properties, Ltd.-'72 v. Sibley*, 429 U.S. 826, 50 L.Ed.2d 89, 97 S.Ct. 82 (1976). A majority of other States, either by express judicial enactment or by judicial interpretation, also have extended the reach of their respective "long arm" statutes to the full extent permitted by the Due Process Clause of the United States Constitution. If the Due Process Clause means anything to nonresident defendants found in a forum State, it must prohibit flagrant parochialism such as that evidenced by a court's unconstitutional assertion of jurisdiction over foreign residents with no connection to the forum State. Accordingly, this case presents an important and recurrent federal issue regarding the authority of States to require alien individual defendants to defend domestic relations matters in whichever State their estranged spouses unilaterally decide to reside.

B. THERE IS NO CONSTITUTIONAL BASIS UPON WHICH THE RESPONDENT COURT CAN SUSTAIN *IN PERSONAM* JURISDICTION OVER ROBERT.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution limits the power of a State to exercise *in personam* jurisdiction over a nonresident defendant.[1] *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1877). The requirements of due process are

[1]In Plyler v. Doe, 457 U.S. 202, 72 L.Ed.2d 786, 795, 102 S.Ct. 2382 (1982), this Court confirmed that aliens "have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments."

satisfied regarding an assertion of *in personam* jurisdiction over a nonresident defendant where there has been reasonable notice to the defendant that an action has been brought, *Mullane v. Central Hanover Trust Company*, 339 U.S. 306, 313-14, 94 L.Ed. 865, 70 S.Ct. 652 (1950), and where the defendant has "certain minimum contacts with [the forum State] that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Company v. Washington*, 326 U.S. 310, 316, 90 L.Ed. 95, 66 S.Ct. 154 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 85 L.Ed. 278, 61 S.Ct. 339 (1940). When plaintiff's cause of action arises out of the defendant's contacts with the forum State, the so-called "specific jurisdiction"[2] over the defendant depends upon the "relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. at 204.

"Even when the cause of action does not arise out of or relate to the foreign [defendant's] activities in the forum State, due process is not offended by a State's subjecting the [defendant] to its *in personam* jurisdiction when there are sufficient contacts between the State and the foreign" defendant to establish so-called "general jurisdiction."[3] *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 80 L.Ed.2d at 411. California Code of Civil Procedure Section 410.10 expressly limits the exercise of jurisdiction by California courts to bases "not inconsistent with the Constitution ... of the United States." Thus, the minimum contacts test applies to measure the

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[2]*See* Helicopteros Nacionales de Colombia, S.A. v. Hall, ___ U.S. ___, 80 L.Ed.2d 404, 411 n. 8, 104 S.Ct. 1868 (1984); von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1136, 1144-64 (1966).

[3]*See Helicopteros*, 80 L.Ed.2d at 411 n. 9; von Mehren & Troutman, 79 Harv. L. Rev. at 1136-44.

Constitutional limitations of the respondent court to exercise either "specific jurisdiction" or "general jurisdiction" *in personam* over Robert.

1. **This Case Does Not Involve Specific Jurisdiction Because the Domestic Relations Causes of Action Do Not Arise Out of Robert's Purported Contacts With California.**

This action seeks to modify the Canadian separation agreement and to recover attorneys' fees and costs in connection with Barbara's domestic relations suit. It does not arise out of Robert's business activities in any location. "The cause of action herein asserted arises, not from the defendant's commercial transactions in interstate commerce, but rather from his ... domestic relations." *Kulko v. California Superior Court,* 436 U.S. 84, 97, 56 L.Ed.2d 132, 98 S.Ct. 1690 (1978); *see Judd v. Superior Court,* 60 Cal.App.3d 38, 44, 131 Cal.Rptr. 246 (1976). Here, as in *Kulko,* 436 U.S. at 97, the controversy between the parties arises from a marriage and separation that occurred outside of California, and from a contract negotiated and executed outside of California. Here, as in *Kulko, id.* and in *Hanson v. Denckla,* 357 U.S. 235, 252, 2 L.Ed.2d 1283, 78 S.Ct. 1228 (1958), the instant action involves an agreement entered into with no connection with the forum State. Robert's isolated contacts with California neither arise out of nor relate to his marriage with, his separation from, or his separation agreement with, Barbara, all of which occurred in Canada. As the marriage, separation, and separation agreement are the *sine qua non* of Barbara's action, and, as none of these essential elements of her action has any relationship whatsoever with California, the instant action arises solely out of Robert's life in Canada, not his isolated, unrelated California contacts.

Judd v. Superior Court was also a proceeding for child custody, child and spousal support and attorneys' fees. There, the wife argued that the trial court could base *in personam* jurisdiction over the nonresident husband on the ground that, by advertising in a publication circulated in California, the husband was doing business in this state. This argument was expressly rejected because the cause of action for dissolution of marriage was not a cause of action arising out of such business. *Judd*, 60 Cal.App.3d at 44.

Moreover, there is no showing that Robert has conducted business in California in a manner that is "so continuous and substantial" as to make the exercise of jurisdiction reasonable in this case. To the contrary, the only business shown to have been conducted in California is not Robert's personal business, but is that of Balboa Enterprises, an Arizona corporation. Although Balboa is owned by Lee Equities, Ltd., which, in turn is owned by Robert, ownership of a subsidiary corporation does not by itself subject the parent corporation or the parent's owner to jurisdiction in the State of the subsidiary's business. *Cannon Manufacturing Company v. Cudahy Company*, 267 U.S. 333, 336, 69 L.Ed. 634, 45 S.Ct. 250 (1925); *see* Douglas & Shanks, *Insulation from Liability Through Subsidiary Corporations*, 39 Yale L.J. 193 (1929).

2. There Are Insufficient Business Contacts to Assert General Jurisdiction, and Therefore the Decision Below Is in Conflict With *Kulko* and *Helicopteros*.

As real party's marital relations causes of action do not arise out of petitioner's business or personal contacts with the State of California, the appropriate basis for determining the propriety of the respondent court's decision rests in the rubric of "general jurisdiction." When

respondent court decided to deny petitioner's motion to quash, it lacked the guidance of this Court's subsequent general jurisdiction decision in *Helicopteros*. That decision held that the nature and quality of an alien defendant's contacts with the forum State were not the kind of "continuous and systematic general business contacts" required to warrant the assertion of *in personam* general jurisdiction over the defendant in a cause of action unrelated to those contacts. *Helicopteros*, 80 L.Ed.2d at 412. The Court thus explained that a greater quantity of contacts are required to establish *in personam* jurisdiction when the cause of action is unrelated or only remotely related to the defendant's forum activities than in instances where the cause of action arises directly out of those activities. *See id.* at 413 & n. 12; *see Shaffer v. Heitner*, 433 U.S. at 213; Lilly, *Jurisdiction Over Domestic and Alien Defendants*, 69 Va. L. Rev. 85, 100 (1983). As was the case in *Helicopteros*, *Shaffer* and *Kulko*, the nonresident defendant here lacks the kind of "continuous and systematic general business contacts" to permit the forum State to exercise *in personam* jurisdiction over him.

a. Balboa's Limited Realty Holdings in California Are an Insufficient Basis for General Jurisdiction Over Robert.

As discussed more fully above at pages 5 and 11, Robert personally does not own any real estate situated in the State of California. Balboa Enterprises, an Arizona corporation, owns the two parcels of realty listed by Barbara in her marital property declaration. Balboa is owned by Lee Equities, Ltd., a Canadian company, which in turn is owned by Robert. Barbara has made no allegations that Balboa or Lee Equities is a sham or alter ego of Robert. Robert's contacts with the two parcels of California realty are attenuated, passive, and uncon-

nected with his domestic relations. Even if Balboa or Lee Equities may have purposely availed themselves of the privileges and protections of California law, *Hanson v. Denckla*, 357 U.S. at 253, Robert personally did not so avail himself. Accordingly, the limited realty holdings in California relied upon by Barbara are not a fair or reasonable basis for subjecting Robert to a lawsuit in California.

Furthermore, whatever business activities have been undertaken by the corporations, can only be described as sporadic and insubstantial. The Monterey and Orange County properties are only 2 of 38 parcels of real property held by the corporations, most of which parcels are located in Canada. The investment in both the properties is passive in nature. The Monterey property was located by another individual who invited Robert to invest in it. That individual has responsibility for the care and management of the property. Similarly, no business activity has taken place concerning the Orange County property, a parking lot that has been leased to a bank. These two properties do not represent a significant portion of Balboa's or Lee Equities' holdings, and cannot be said to be such "continuous and systematic general business contacts" as to justify imposing jurisdiction over either Balboa or Lee Equities, much less over Robert, regarding causes of action unrelated to that activity. *Helicopteros*, 80 L.Ed.2d at 412.

Further still, this Court has held that the mere presence of property within a State is not sufficient to assert jurisdiction over the property owner where the property is not the subject matter of the litigation and the underlying cause of action is not related to the property. *Shaffer v. Heitner*, 433 U.S. at 213. The subject matter of this litigation is far broader than the Orange County or Monterey properties. The underlying cause of action —

for child support, spousal support and attorneys' fees — is not related to the property. Accordingly, jurisdiction over Robert cannot be based on Balboa's ownership of the properties or on any of Balboa's related activities.

b. Robert's Non-Business Visits to California Are an Insufficient Basis for *in Personam* Jurisdiction.

Robert's temporary and infrequent non-business visits to California are an insufficient basis for respondent court to exercise *in personam* jurisdiction. In *Kulko* this Court specifically rebuffed a previous exercise of flagrant parochialism by the state courts of California against a nonresident husband who had also made temporary visits to the State. "To hold such temporary visits to a State a basis for the assertion of in personam jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment." *Kulko*, 436 U.S. at 93. More recently in *Helicopteros*, this Court rejected a similar unconstitutional exercise of state parochialism, even though the foreign defendant had business visits to the forum State to negotiate a contract, to purchase equipment, and to train employees. As in *Kulko* and *Helicopteros*, this Court should find that the nonresident defendant's occasional visits to the forum State cannot raise sufficient contacts with the forum to assert *in personam* jurisdiction over him in actions unrelated to those visits.

Nor can California constitutionally exercise *in personam* jurisdiction over Robert on the basis of his presence in California at the time he was served with the summons in the action. Robert was present in California at that time in order to visit his children in accordance with the visitation rights set forth in the Canadian separation agreement. Respondent court's exercise of *in personam* jurisdiction on that basis or on the basis of other visits to Robert's children not only contravenes the

minimum contacts test of *International Shoe* and its progeny, but also contravenes California's strong public policy to encourage visitation by parents after separation or a dissolution of the marriage. *Judd v. Superior Court*, 60 Cal.App.3d at 45; *Titus v. Superior Court*, 23 Cal.App. 3d 792, 802-03, 100 Cal.Rptr. 477 (1972).[4]

The *International Shoe* standard of fairness must enable a nonresident parent to exercise his child visitation rights without consenting to jurisdiction in whichever State the custodial parent unilaterally decides to reside. *See Kulko*, 436 U.S. at 93. "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson v. Denckla*, 357 U.S. at 253. Further, as a matter of "fair play and substantial justice", a State should foster the creation of reasonable visitation agreements and promote the interests of family harmony and children's preferences. By subjecting Robert to jurisdiction, the decision below conflicts with the *International Shoe* standard and frustrates these important public policies. As Robert's non-business visits to California cannot support a constitutional exercise of *in personam* jurisdiction, and as the Due Process standard and public policies should not be derided, certiorari should be granted and the decision below should be reversed.

c. Robert Has Not Caused Effects in California Sufficient to Create a Basis for the Exercise of Jurisdiction.

To the extent Robert may have caused any effects in California by his support of his family in California, pursuant to an agreement entered into in Canada, this

[4]In *Judd* and *Titus*, petitioners were seeking either a dissolution of marriage or recognition of a foreign decree dissolving a marriage and alleged certain trips to California by nonresident spouses to visit their children as a basis for jurisdiction over the spouses. In each of those cases, the court rejected those arguments.

Court must refrain from exercising jurisdiction on that basis because to do so would not comport with traditional concepts of fairness and justice. *Kulko v. Superior Court*, 436 U.S. at 97; *Sibley v. Superior Court*, 16 Cal.3d at 446.

In order to show "fairness", it is necessary to establish that the nonresident somehow purposefully availed himself or herself of the privilege of entering into California and seeking the protection of its laws. *E.g., Hanson v. Denckla*, 357 U.S. at 253. However, Robert has never taken any purposeful action to avail himself of the protection of California laws with respect to his marriage; he has remained in Alberta, the place of marital domicile, while it is Barbara who moved herself and the children to California. Robert derives no economic benefit from their presence in California. This Court has held that, under such circumstances, it would be unfair and inappropriate for a California court to exercise *in personam* jurisdiction over a party. *Kulko v. Superior Court*, 436 U.S. at 97. As Robert has engaged in no other substantial acts causing effects in California sufficient to create a basis for *in personam* jurisdiction over him, certiorari should be granted and the decision below should be reversed.

d. *Kulko* and *Helicopteros* Are Controlling Here.

By virtue of the Supremacy Clause, the U.S. Constitution and the decisions of this Court construing the Constitution displace contrary state decisions. The respondent court's decision is in conflict with controlling decisions of this Court, *Kulko v. California Superior Court* and *Helicopteros Nacionales de Colombia, S.A. v. Hall*.

This Court's decision in *Kulko* relied upon facts dramatically similar to those herein. Both *Kulko* and the

instant action involved domestic relations actions in which a Superior Court of California was the forum, applying California Code of Civil Procedure Section 410.10 to the nonresident, non-domiciliary husband of a resident wife as plaintiff. The husband and wife in both *Kulko* and in the instant action were domiciled and resided outside of California from the time of the marriage through the time of their separation. The two children of the *Kulko* and the instant marriages both resided with their parents outside of California until their parents separated. The spouses in *Kulko* and the instant action negotiated and executed a written separation agreement outside of California in which the wife waived spousal support, received custody of the children, and was to receive child support payments. In both *Kulko* and the instant action, after the marital separation, the wife and the two children moved to California where the wife commenced an action to establish a divorce, to increase the child support payments, and to obtain full custody of the children. The husband in both *Kulko* and the instant action appeared specially and moved to quash service on the basis of his insufficient contacts with California, which was denied by the trial court. In both *Kulko* and the instant action, the California Court of Appeal denied the husband's petition for writ of mandate and the California Supreme Court sustained the rulings of the lower courts, even though the cause of action arose from the husband's domestic relations rather than from his commercial activities, even though California had no specialized jurisdictional statute, and even though a convenient forum was available to the plaintiff. Further, the parties to the instant separation agreement specifically provided that the law of another forum would apply to the agreement. Further

still, the spouses in *Kulko* were married in California; the spouses herein were married outside of California.

This Court's recent decision in *Helicopteros* relied upon facts indicating far greater forum contacts than those herein. *Helicopteros* involved a wrongful death cause of action against, *inter alia,* a Colombian corporation (Helicol) which, despite its continuous business contacts with the forum State, nonetheless had insufficient forum contacts for the constitutional exercise of *in personam* jurisdiction. Helicol had conducted negotiations in the forum State for a contract arguably relating to the underlying cause of action; accepted checks drawn on a forum bank; purchased helicopters and other equipment in the forum for many years; sent pilots into the forum to be trained in the use of the equipment; and sent management personnel into the forum to consult with the seller on technical matters relating to the purchased equipment.

The instant action involves a domestic relations cause of action against a Canadian individual who, like the alien defendant in *Helicopteros,* never has been authorized to do business in the forum State; never had an agent for service of process within the forum; never had a place of business in the forum; never was licensed to do real estate or any other business there; and never solicited business, nor signed a contract, nor recruited employees in the forum. Robert was not married in the forum and did not reside there during his marriage. Robert did conduct a single negotiation in the forum State for a contract arguably relating to the underlying cause of action, but had none of the other contacts the defendant in *Helicopteros* had.

In both *Kulko* and *Helicopteros,* this Court held that the nonresident defendants' contacts with the forum

State were insufficient to satisfy the Due Process requirements for an exercise of *in personam* jurisdiction. The instant case involves facts and contacts virtually identical to those in *Kulko*, and facts and contacts materially less substantial than those in *Helicopteros*. The instant case is controlled by *Kulko* and *Helicopteros*, both of which mandate that the decision below be reversed. Accordingly, certiorari should be granted and an order should be issued directing respondent court to grant Robert's motion to quash service of process.

CONCLUSION.

The Due Process Clause does not permit a State to make a binding judgment *in personam* against an individual with whom the State has virtually no contacts, ties, or relations. "Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of [the forum] State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause . . . act[s] to divest the State of its power to render a valid judgment." *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286, 294, 62 L.Ed2d 490, 100 S.Ct. 559 (1980). The Due Process and Supremacy Clauses operate in this case to preclude California courts from applying the state long arm statute to petitioner, who lacks sufficient contacts with California under either a specific or a general jurisdiction theory.

The respondent court was thus under a constitutional duty to grant Robert's motion to quash. The quality, extent, and nature of Robert's contacts with California are such that it offends traditional notions of fairness for California to exercise *in personam* jurisdiction over him. Nevertheless, respondent court has ordered Robert

to pay child support, spousal support, attorneys' fees, and costs. Accordingly, this Court should grant Robert's Petition for Certiorari and thereafter issue an order reversing respondent court's decision and directing that court to quash service of process. Alternatively, this Court should vacate the February 22, 1984 decision of the respondent court and remand this action for proceedings consistent with this Court's subsequent decision in *Helicopteros*.

Respectfully submitted,

ADAMS, DUQUE & HAZELTINE
CATHERINE HUNT RUDDY
RONALD F. FRANK
By CATHERINE HUNT RUDDY,

Attorneys for Petitioner.

APPENDIX A.

Minute Order.

Superior Court of California, County of Los Angeles, Dept. WEG.

Date: Feb. 22, 1984.

Honorable: Harry Mock, Jr., Judge.

C. Crowley, Deputy Clerk.

D. Mraz, Reporter.

In Re the Marriage of Barbara Mavis Cristall, Petitioner vs. Robert Ivor Lee Cristall, Respondent. WED 43657.

Counselor Petnr.: Henry W. Walther, Anita Paleologos.

Counsel for Resp.: Robert Fischer Jr.

Nature of Proceedings: Order to Show Cause re Modification of Child Support, Spousal Support, Atty. Fees and Costs.

Motion to Quash Service of Summons is argued and denied.

Petitioner's exhibits 1 (Lot Book Guarantee) and 2 (Lot Book Guarantee-Friedman), are admitted in evidence.

Matter is transferred to Department West A for reassignment.

Later.

Matter is set for Order to Show Cause re Modification for 3-22-84 at 9:00 am in department West A.

[SEAL]

The Document to Which This Certificate is Attached is a Full, True and Correct Copy of the Original on File and of Record in My Office.

Attest Mar. 30, 1984. Minutes Entered 2-22-84.

APPENDIX B.

Order.

Attorney or party without attorney (name and address): Deering, Walther & Sands, 2444 Wilshire Blvd., Ste. 301, Santa Monica, CA 90403, Attorney for: Petitioner. Telephone No.: (213) 829-9918.

Superior Court of California, County of Los Angeles, 1725 Main Street, Santa Monica, CA 90401, West.

Marriage of Petitioner: Barbara M. Cristall, Respondent: Robert I. L. Cristall. Case Number: WED 43657.

Original Filed: May 30, 1984.

Order After Hearing: Child Custody, Child Support, Attorney Fees and Costs, Injunctive Order, Visitation, Spousal Support.

1. This proceeding came on for hearing as follows: a. Date: 5/24/84, Dept.: E, b. Judge: David M. Rothman, c. Petitioner present in court. Attorney present in court: Avery M. Cooper, f. On the Order to Show Cause filed. Date: 10/14/83. By: Petitioner.

2. Evidence was presented.

3. IT IS ORDERED Pending trial or until further order of this court, a. Custody and support of the minor children of the parties are fixed as follows: Child (Name and age): Anthony Cristall (15), Custody to: Petitioner. Monthly Child Support: $1,500, Payable by: 6/1/84, Payable on: 1st of each month. Jonathan Cristall (13). Custody to: Petitioner. Monthly Child Support: $1,500, Payable by: 6/1/84, Payable on: 1st of each month. b. Respondent shall have (1) reasonable visitation rights with the minor children. c. Respondent shall pay as spousal support: (1) To Petitioner, (2) Amount: $4,000 per month, (3) Payable: 1st of each month commencing 6/1/84. d. Petitioner shall pay on account to attorney (name): Henry W. Walther: (1) Fees: $5,000, payable:

by 6/15/84, (2) Costs: $5,000, payable: by 6/15/84. . . . Petitioner, Respondent is restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life. . . . 1. Other (specify): 1. Respondent is ordered not to remove the minor children from the Continental United States. 2. Respondent shall maintain a life insurance policy with Petitioner as beneficiary until further order of Court in the amount of $2,700,000. Said policy is to be with Commercial Union Life Insurance. 3. All payments above are to be net payments and are to be made in U.S. currency.

Dated: May 30, 1984.

DAVID M. ROTHMAN,
Judge of the Superior Court.

APPENDIX C.

Order.

In the Court of Appeal of the State of California. Second Appellate District, Division One.

Robert Ivor Lee Cristall, Petitioner, vs. The Superior Court of the State of California for the County of Los Angeles, Respondent, Barbara Mavis Cristall, Real Party in Interest. B004470 (Super. Ct. No. WED 43657) (Harry Mock, Jr., Judge).

Filed: Apr. 5, 1984.

THE COURT:

The petition for writ of mandate and other extraordinary relief, filed March 29, 1984, has been read and considered.

The petition is denied.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983
No. 83-2108

ROBERT IVOR LEE CRISTALL,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

BARBARA MAVIS CRISTALL,

Real Party in Interest.

BRIEF IN OPPOSITION OF REAL PARTY IN INTEREST

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BARBARA MAVIS CRISTALL

27pp

QUESTIONS PRESENTED

1. Has the issue which petitioner raises here been properly presented to the highest California court in which a decision could be had?

2. Does petitioner Robert Ivor Lee Cristall have the necessary minimum contacts with California so that maintenance of a marital dissolution action there does not offend traditional notions of fair play and substantial justice?

PARTIES TO THE PROCEEDINGS BELOW

All parties to the proceedings in the Los Angeles County Superior Court are included in the caption of the petition for writ of certiorari. Real party in interest Barbara Mavis Cristall never appeared in the original proceedings before the California Court of Appeal or the California Supreme Court where petitioner Robert Cristall sought discretionary review via mandamus of the denial of the superior court's denial of his motion to quash service of process. The

California Court of Appeal denied petitioner Robert Cristall's petition for a peremptory writ of mandate upon consideration of Robert's papers only, without requiring a formal or informal response from real party in interest Barbara. Similarly, the California Supreme Court denied Robert's petition for hearing without an appearance or responsive papers from Barbara.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1983
No. 83-2108

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Real Party in Interest.

BRIEF IN OPPOSITION OF REAL PARTY IN INTEREST

OPINIONS BELOW

There is no opinion of any California court in this case. The Los Angeles County Superior Court denied petitioner Robert Cristall's motion to quash service of process orally from the bench on February 22, 1984. A facsimile of this order appears as Appendix A to the petition for writ of certiorari. On April 5, 1984, the California Court of Appeal summarily denied Robert's petition for a writ of mandate and other relief, in which he

sought review of the superior court's denial of his motion to quash. A facsimile of this order is included in the petition for writ of certiorari as Appendix C. On May 2, 1984, the California Supreme Court denied Robert's petition for hearing from the California Court of Appeal's denial of his mandamus petition. Notification of this denial was given by postcard. No facsimile of the California Supreme Court's order is included in the petition for writ of certiorari.

Appendix B, attached to the petition for writ of certiorari, is a further order of the superior court on May 30, 1984. This order issued after all stays of trial court proceedings had expired. It is not an order under review in this case.

JURISDICTION

The petition for writ of certiorari was timely filed after the California Supreme Court's denial of a hearing on May 2, 1984. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, amendment XIV, § 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES INVOLVED

California Code of Civil Procedure § 418.10 provides in relevant part:

"(c) If such motion [a motion to quash service] is denied by the trial court, the defendant, within 10 days after such service upon him of a written notice of entry of an order of the court denying his motion, or

within such further time not exceeding 20 days as the trial court may for good cause allow, and before pleading, may petition an appropriate reviewing court for a writ of mandate to require the trial court to enter its order quashing the service of summons or staying or dismissing the action. The defendant shall file or enter his responsive pleading in the trial court within the time prescribed by subdivision (b) unless on or before the last day of his time to plead, he serves upon the adverse party and files with the trial court a notice that he has petitioned for such writ of mandate. The service and filing of such notice shall extend his time to plead until 10 days after service upon him of a written notice of the final judgment in the mandate proceeding. Such time to plead may for a good cause shown be extended by the trial court for an additional period not exceeding 20 days."

STATEMENT OF THE CASE

On October 14, 1983, real party in interest Barbara Mavis Cristall [hereinafter "Barbara"] instituted the instant action for dissolution of her marriage to petitioner Robert Ivor Lee Cristall [hereinafter "Robert"] in the Los Angeles County Superior Court. In this action, Barbara seeks spousal support, child support, a determination of certain property, and various other relief including a set aside of a prior Canadian marital settlement agreement.

At the time Barbara filed suit, she was a resident of the Los Angeles County, California. She and Robert are Canadian citizens. Barbara has a petition for permanent residence pending with the Immigration and Naturalization Service. Her sister is an American citizen living in New Jersey. Barbara's immigration category is P 5-1, and her priority date is May 19, 1982. She entered the United States in August of 1982.

Unmentioned in the petition for writ of certiorari is the fact that Robert has an action pending against Barbara in the Court of Queen's Bench of Alberta, Canada, Judicial District of Edmonton, to have a prior marital settlement agreement between the parties declared null and void in its entirety. If the California court were held to lack personal jurisdiction over Robert and if the Canadian action were successful, Robert would be under no support obligations for his ex-wife and his minor children. Barbara has not made a general appearance in the Canadian action.

Robert's response to Barbara's California action was to file a motion to quash service of process. In opposition to the motion to quash, Barbara presented evidence that Robert does not come to California solely for the purpose of visiting his children. He visits California frequently as his girl friend lives in Los Angeles. During 1983, Robert visited

California on the average of once a month and his visits had an average duration of five days. Visitation with his minor children occupies only a small portion of each visit to California, the rest of the time being utilized for business and social activities within the state.

Both of Robert's parents live in California. Robert assisted in locating them there. His father is 77 years old and lives in a convalescent home in Long Beach, California; he suffers from Alzheimer's disease. Robert's mother is 71 years old and lives in a house at Leisure World in Laguna Hills, California. Robert consults with his parent's California doctors, assists them with their financial affairs and business decisions, and is a co-signator of their personal bank account at California Canadian Bank.

In 1971, Robert had eye surgery for glaucoma in California at the Jules Stein Institute. He returns to California twice a

year to have Dr. Straatsma check his eyes. Robert's uncle, Dr. Elliot Corday, is a practicing cardiologist in Beverly Hills.

Robert's activities in California constitute doing business in the State and the business is related to marital property located in California, the division of which marital property is the subject of dispute in the California lawsuit. Personally or through wholly-owned corporate entities, Robert owns two pieces of real property in California: the "Monterey property" and the "Orange County property."

The Monterey property consists of 600 acres of land 11 miles south of Carmel. Until a recent transfer of title by Robert to a corporation which is wholly-owned by another corporation wholly-owned by Robert, Robert was one of the record owners of the Monterey property.

On April 29, 1980, Barbara executed a grant deed transferring her interest in the Monterey County property to Robert. In a

letter dated that same date from Robert to Barbara, Robert stated that in the event of a divorce, execution of the "Quit Claim [sic] shall not be deemed to be a waiver by you of any claim that you may have under Alberta law or any other jurisdiction that may be involved with such proceedings relating to this property as it forms part of my estate."

Robert's activities with regard to the Monterey property are extensive. He and the other co-owners used the assistance of a California attorney, a California real estate broker and a California appraiser to assist with acquisition of the Monterey property. Robert hired an architect to design a building on the property and paid the architect personally. He has paid California property taxes on his interest in this property. He has put the property up for sale. While the Monterey property is primarily investment property, Robert has considered building a house on the property.

Robert borrowed money from his company,

Lee Equities, to purchase the Monterey property, and, about two months before the hearing on the motion to quash, he transferred his interest in the property to Balboa Equities. Robert is a 100% shareholder of Lee Equities, and Lee Equities is a 100% shareholder of Balboa Equities. In an exhibit attached to the Order To Show Cause in the California superior court, Robert's accountants had included the financial activities of Lee Equities and Paragon Equities (now reorganized into Balboa Equities) to calculate Barbara's marital interest in the property of their marriage. Robert utilizes accountants to do work for him in California. This work includes accounting services with regard to Balboa Equities.

With regard to the Orange County property, Robert transferred his personal interest in this property to Balboa Equities and Harry Friedman in September, 1982. At the request of Robert, Barbara executed a

quitclaim deed transferring all of her rights in the Orange County property to Robert on August 10, 1977. The real property in Orange County is about an acre and one half of land improved with a parking lot. The land is leased to a bank.

There is a further factual issue in the California action with respect to an alleged California oral modification of the Canadian marital settlement agreement originally entered into by the parties.

After receiving the evidence and hearing oral argument of counsel on Robert's motion to quash, the trial judge in the Los Angeles County Superior Court ruled from the bench as follows:

> "THE COURT: This is not a close case in any way. The motion to quash is denied." (RT 17.)

On April 5, 1984, the California Court of Appeal summarily denied Robert's petition for a writ of mandate and other relief, in which he sought review of the superior

court's denial of his motion to quash. On May 2, 1984, the California Supreme Court denied Robert's petition for hearing from the California Court of Appeal's denial of his mandamus petition.

REASONS WHY THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

I

PETITIONER HAS NOT BEEN TO THE HIGHEST CALIFORNIA COURT IN WHICH A DECISION COULD BE HAD BECAUSE OF AN ADEQUATE PROCEDURAL GROUND SUPPORTING DENIAL OF REVIEW BY THE CALIFORNIA COURT OF APPEAL AND SUPREME COURT

Under 28 U.S.C. § 1257, this Court's jurisdiction to review state court judgments is limited to judgments "by the highest court of a state in which a decision could be had." Important policy consideration underlie this limitation. As this Court observed in Costarelli v. Massachusetts, 421 U.S. 193, 196 (1975), "[a]n important purpose of the requirement that we review only final judgments of highest available state courts is to prevent our interference with state proceedings when the underlying dispute may

be otherwise resolved."

If the judgment of a state trial court is subject under state law to discretionary review by a higher court, such review must be sought. If the appellate court declines to review the case, the trial court's judgment becomes that of the highest court in which decision could be had. Minneapolis, St. P. & S. S. M. Ry. Co. v. Rock, 279 U.S. 410 (1929).

In this case, California law provides a discretionary avenue of appellate review for denial of motions to quash service of summons for alleged lack of personal jurisdiction. California Code of Civil Procedure section 418.10 provides a 10-day time period in which to seek review of a denial of a motion to quash by the filing of a petition for a writ of mandate in the California Court of Appeal.

Petitioner's motion to quash was denied on February 22, 1984. Petitioner's counsel was present in court and heard the ruling from the bench. Petitioner did not file his

petition for writ of mandate until March 29, 1984 -- over a month later. (See Appendix C to Petition for Writ of Certiorari.) Appended to the petition filed with the California Court of Appeal was a copy of the Reporter's Transcript of the hearing on the motion to quash, which was proof that petitioner had written notice that the trial court had denied the motion to quash. The reporter's certificate at the back of transcript shows that the transcript was prepared on February 26, 1984, so that presumably counsel for petitioner had the transcript in hand a few days thereafter for purposes of preparing the petition to the California Court of Appeal.

Thus, when the California Court of Appeal summarily denied the petition for writ of mandate on April 5, 1984 and the California Supreme Court denied a hearing thereafter, the probable reason for the denials was what each court considered to be an apparent procedural default -- a tardy

filing. In addition to seeking review by the proper method, a litigant must comply with the requirements of state appellate procedure. If the state's highest court denies review for failure to comply with reasonable procedural rules, "the case stands as though no appeal had been prosecuted from the judgment rendered by the trial court." Newman v. Gates, 204 U.S. 89, 95 (1907).

In this context, the requirement that state appellate remedies be exhausted becomes mingled with the adequate state law ground doctrine. Noncompliance with proper state procedural rules furnishes an independent and adequate state ground for refusing to consider a federal question, as not properly presented to the highest state court. Parker v. Illinois, 333 U.S. 571 (1948).

II

THE TRIAL COURT'S DENIAL OF THE MOTION TO QUASH WAS CORRECT ON THE MERITS

In this case, the constitutional standard for determining whether California has personal jurisdiction over petitioner

Robert Cristall in the pending state court family law proceedings is set forth in this Court's opinion in International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945): that a defendant "have certain minimum contacts with [the forum State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" (Brackets added; citations omitted.)

From the Statement of the Case above, it should be readily apparent that this case is a far cry from the facts of Kulko v. Superior Court, 436 U.S. 85 (1978). There the appellant's only connection with California was his acquiescence in the stated preference of one of his children to live with her mother in California. As this Court summed up Kulko, "[t]his single act is not surely one that a reasonable parent would expect to result in the substantial financial burden and personal strain of litigating a child-support suit in a forum 3,000 miles

away, and we therefore see not basis on which it can be said that appellant could reasonably have anticipated being 'haled before a [California] court . . . ." 436 U.S. at 97-98 (citation omitted).

In this case, petitioner Robert Cristall is no stranger to California. In the normal conduct of his business and non-business affairs, Robert is in California for an average of five days each month. Previously in his own name and now through wholly-owned corporations, he owns two pieces of real estate in California. With respect to the Monterey property, he acknowledged in his April 29, 1980 letter that Barbara's deed of the property to him was not a "waiver" of any claim she had to the property, which he acknowledged to be part of the marital estate. That acknowledgment of his wife's claim to a piece of California property was surely a basis for reasonable anticipation of possible California adjudication of rights in that piece of property as part of the estate.

Since Robert is frequently in California for business and social reasons and since his ex-wife and their minor children now reside there, the totality of all the facts of this case would have led a reasonable husband/parent to expect that he might be sued for dissolution of his marriage there. The fact that Robert already employs lawyers and accountants to deal with his business affairs in California coupled with the frequency of his physical presence in the State, his ownership of real property there, and his relatives and children there, his financial burden and personal strain from litigating in California is not substantial greater than a full-time resident. Indeed, his burden and strain from litigation in California is probably no greater than it would be if suit had been brought in Edmonton, Alberta, in view of the fact that Robert appears to be on the road a lot. Robert is no hapless tourist served with process while changing planes at an airport;

his contacts with California are real and very substantial.

Robert benefits from the protection of California laws for the properties he owns there and the corporations through which he does business. By ownership and management of these properties, there is action "by which the defendant purposefully avails [him]self of the privilege of conducting activities within the forum state. Hanson v. Denckla, 357 U.S. 235, 253 (1958). The fact that the properties are relevant to questions of support and property division in divorce proceedings makes them equally relevant to a determination of whether there is personal jurisdiction related to these items. Furthermore, the California trial court quite properly looked behind the corporate facade to the real substance of ownership of the Monterey and Orange County properties. Wholly-owned corporations should not be permitted to shield a husband and father from adjudication of his support duties. Doing

business in California, coupled with regular physical presence and the other contacts already discussed, makes personal jurisdiction tenable in this case. It should not offend traditional notions of fair play and substantial justice.

In the Kulko decision, this Court recognized that the "minimum contacts" test of International Shoe is not susceptible of mechanical application and that few answers will be written in black and white. 436 U.S. at 93. Instead, "[t]he greys are dominant and even among them the shades are innumerable." Estin v. Estin, 334 U.S. 541, 545 (1948). The instant case is a case in which the trial court weighed the facts to determine whether the requisite affiliating circumstances were present and made a judgment call in favor of Barbara.

This case does not break any new ground. It merely applies now familiar rules to a specific factual situation. The superior court's application of the minimum contacts

test in this case does not represent an extension of International Shoe and, if sustained, the result will not be unfair, unjust or unreasonable. For these reasons, the instant case does not present an important question of law for decision by this Court. Any decision announced in this case would have little impact beyond the parties themselves.

Finally, it should be noted that petitioner Robert's challenge to the jurisdiction of the California superior court is overbroad. The California courts recognize the concept of divisible divorce. Because of Barbara's residence in California, California has jurisdiction to dissolve the marital status, irrespective of personal jurisdiction to adjudicate support rights or to divide marital property. See Estin v. Estin, supra, 334 U.S. at 549; Worthley v. Worthley, 44 Cal.2d 465, 468, 283 P.2d 19 (1955).

CONCLUSION

For the foregoing reasons, real party in interest Barbara Mavis Cristall urges that this petition for a writ of certiorari be denied.

Dated: July 14, 1984.

Respectfully submitted,

HENRY W. WALTHER
DEERING, WALTHER & SANDS
and
RUSSELL IUNGERICH
LAW OFFICES OF RUSSELL IUNGERICH

By_____
Russell Iungerich
Attorneys for Real Party in Interest
BARBARA MAVIS CRISTALL

RIDISK/CRSBROPP

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 83-2108

Robert Ivor Lee Cristall,

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vs.

Superior Court of the State of California

for the County of Los Angeles,

Respondent.

Barbara Mavis Cristall,

Real Party in Interest.

PETITIONER'S SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

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Real Party in Interest.

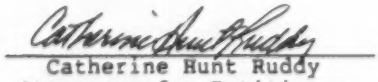
PETITIONER'S SUPPLEMENT TO

PETITION FOR WRIT OF CERTIORARI

Pursuant to Supreme Court Rule 22.5, Petitioner Robert Ivor Lee Cristall respectfully submits this his Supplement to the Petition for Writ of Certiorari filed in this Court on June 19, 1984. In the intervening time since the filing of the Petition for Writ of Certiorari, counsel has received the Order Denying Hearing of the California Supreme Court, referred to at page 6 of the Petition. A true and correct copy of this Order is attached hereto as Exhibit A.

Respectfully submitted

ADAMS, DUQUE & HAZELTINE
CATHERINE HUNT RUDDY
RONALD F. FRANK

By 
Catherine Hunt Ruddy
Attorneys for Petitioner
Robert Ivor Lee Cristall

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 1, No. B004470

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED

MAY 2 1984

Fernando P. Gill, Clerk

DEPUTY

CRISTALL, Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, Respondent;
CRISTALL, Real Party in Interest.

Petition for hearing DENIED.

Bird
Chief Justice

EXHIBIT A

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 523 West Sixth Street, 10th Floor Los Angeles, California 90014

On July 17, 1984, I served the foregoing document described as

PETITIONER'S SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI

on the parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

Henry W. Walther, Esq., Deering Walther & Sands
2444 Wilshire Boulevard, Suite 301, Santa Monica, CA 90403

The Honorable Judge David M. Rothman, Superior Court of the State of California, 1725 Main Street, Santa Monica, CA 90401

The Honorable Judge Harry Mock, Jr., Superior Court of the State of California, 1725 Main Street, Santa Monica, CA 90401

John Van de Kamp, Esq., Attorney General of the State of California, 3580 Wilshire Boulevard, Suite 800, Los Angeles, CA 90010

Executed on July 17, 1984, at Los Angeles, California.

[X] (State) I declare under penalty of perjury that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

Al McCarty

AL McCARTY

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